

House Study Bill 657

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
LABOR BILL BY CHAIRPERSON
OLSON)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning civil service commissions, appointment and
2 promotion procedures, disciplinary procedures, providing a
3 civil penalty, and making a penalty applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5611YC 82
6 md/rj/5

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1 1 Section 1. Section 400.1, subsection 1, Code Supplement
1 2 2007, is amended to read as follows:
1 3 1. In cities having a population of eight thousand or over
1 4 and having a paid fire department or a paid police department,
1 5 the mayor, one year after a regular city election, with the
1 6 approval of the council, shall appoint three civil service
1 7 commissioners ~~who~~. ~~The mayor shall publish notice of the~~
1 8 ~~names of persons selected for appointment no less than thirty~~
1 9 ~~days prior to a vote by the city council. Commissioners shall~~
1 10 hold office, one until the first Monday in April of the second
1 11 year, one until the first Monday in April of the third year,
1 12 and one until the first Monday in April of the fourth year
1 13 after such appointment, whose successors shall be appointed
1 14 for a term of four years. In cities having a population of
1 15 more than seventy thousand, the city council may establish, by
1 16 ordinance, the number of civil service commissioners at not
1 17 less than three.

1 18 Sec. 2. Section 400.2, Code 2007, is amended to read as
1 19 follows:

1 20 400.2 QUALIFICATIONS == ~~CONFLICT OF INTEREST~~ PROHIBITED
1 21 CONTRACTS.

1 22 1. The commissioners must be citizens of Iowa, eligible
1 23 electors as defined in chapter 39, and residents of the city
1 24 preceding their appointment, and shall serve without
1 25 compensation. A person, while on the commission, shall not
1 26 hold or be a candidate for any office of public trust.
1 27 However, when a human rights commission has been established
1 28 by a city, the director of the commission shall ex officio be
1 29 a member, without vote, of the civil service commission.

1 30 2. Civil service commissioners, with respect to the city
1 31 in which they are commissioners, shall not do any of the
1 32 following:

1 33 a. ~~sell~~ Sell to, or in any manner become parties, directly
1 34 or indirectly, to any contract to furnish supplies, material,
1 35 or labor to the city ~~in which they are commissioners except as~~
2 1 ~~provided in section 362.5.~~

2 2 b. Have an interest, direct or indirect, in any contract
2 3 or job of work or material or the profits thereof or services
2 4 to be furnished or performed for the city.

2 5 3. A contract entered into in violation of subsection 2 is
2 6 void.

2 7 4. A violation of ~~this conflict of interest provision the~~
2 8 provisions contained in subsection 2 is a simple misdemeanor.

2 9 Sec. 3. Section 400.9, subsections 2 and 4, Code 2007, are
2 10 amended to read as follows:

2 11 2. The commission shall establish guidelines for
2 12 conducting the examinations under subsection 1. It may
2 13 prepare and administer the examinations or may hire persons
2 14 with expertise to do so if the commission approves the
2 15 examinations and if the examinations apply to the position in
2 16 the city for which the applicant is taking the examination.
2 17 It may also hire persons with expertise to consult in the

2 18 preparation of such examinations if the persons so hired are
2 19 employed to aid personnel of the commission in assuring that a
2 20 fair examination is conducted. A fair examination shall
2 21 explore the competence of the applicant in the particular
2 22 field of examination. The names of persons approved to
2 23 administer any examination under this section shall be posted
2 24 in the city hall at least twenty-four hours prior to the
2 25 examination.

2 26 4. If there is a certified list of qualified candidates
2 27 for a promotional appointment, the following procedures shall
2 28 be followed:

2 29 a. A publication stating that interviews are being
2 30 scheduled to make a new certified list to fill a vacancy in a
2 31 civil service promotional grade classification shall be posted
2 32 for at least five working days before the closing date for the
2 33 interviews in the same locations where examination notices are
2 34 posted.

2 35 b. An employee who wishes to voluntarily demote or to
3 1 laterally transfer into a vacancy and has previously been or
3 2 is currently in the classification where the vacancy exists,
3 3 shall notify the civil service commission of the employee's
3 4 interest in the vacant position. The employee shall be added
3 5 to the list of candidates to be interviewed and considered for
3 6 the vacancy.

3 7 c. Each candidate on a list of qualified candidates must
3 8 be considered by the commission before another list may be
3 9 created.

3 10 Sec. 4. Section 400.15, Code 2007, is amended to read as
3 11 follows:

3 12 400.15 APPOINTING POWERS.

3 13 1. All appointments or promotions to positions within the
3 14 scope of this chapter other than those of chief of police and
3 15 chief of fire department shall be made:

3 16 In cities under the commission form of government, by the
3 17 superintendents of the respective departments, with the
3 18 approval of the city council; in cities under the city manager
3 19 plan, by the city manager; in all other cities with the
3 20 approval of the city council; ~~and in the police and fire~~
3 21 ~~departments department, by the chiefs chief of police the~~
3 22 ~~respective departments; and in the fire department, by the~~
3 23 ~~chief of the fire department pursuant to subsection 2.~~

3 24 All such appointments or promotions shall promptly be
3 25 reported to the clerk of the commission by the appointing
3 26 officer. An appointing authority may transfer an employee,
3 27 other than police officers and fire fighters, from one
3 28 department to the same civil service classification in another
3 29 department, and such employee shall retain the same civil
3 30 service status.

3 31 2. All appointments or promotions to positions within the
3 32 fire department other than the chief of the fire department
3 33 shall be made as follows:

3 34 a. The chief of the fire department shall make a written
3 35 recommendation to the commission for each appointment or
4 1 promotion.

4 2 b. If the individual being recommended for appointment or
4 3 promotion is not the highest ranked eligible candidate on the
4 4 certified list of qualified candidates all of the following
4 5 shall apply:

4 6 (1) The chief of the fire department shall describe the
4 7 reasons for recommending the individual.

4 8 (2) Other eligible candidates shall be given an
4 9 opportunity to address the commission outside the presence of
4 10 the chief of the fire department regarding the recommendation.

4 11 c. The commission shall either approve or reject the
4 12 recommendation by a majority vote within fourteen days. If
4 13 the commission does not vote on a recommendation within
4 14 fourteen days it is deemed approved.

4 15 d. If the recommendation is approved by the commission, it
4 16 shall be submitted to the city council for approval at the
4 17 next scheduled city council meeting.

4 18 Sec. 5. Section 400.17, unnumbered paragraph 4, Code 2007,
4 19 is amended to read as follows:

4 20 A person shall not be appointed, promoted, discharged, or
4 21 demoted to or from a civil service position or in any other
4 22 way favored or discriminated against in that position because
4 23 of political or religious opinions or affiliations, race,
4 24 national origin, sex, or age, or in retaliation for the
4 25 exercise of any right enumerated in this chapter. However,
4 26 the maximum age for a police officer or fire fighter covered
4 27 by this chapter and employed for police duty or the duty of
4 28 fighting fires is sixty-five years of age.

4 29 Sec. 6. Section 400.18, Code 2007, is amended to read as
4 30 follows:

4 31 400.18 REMOVAL, DEMOTION, OR SUSPENSION.

4 32 ~~1. No~~ A person holding civil service rights as provided in
4 33 this chapter shall not be removed, reprimanded, demoted, or
4 34 suspended arbitrarily, except as otherwise provided in this
4 35 chapter, but may be removed, reprimanded, demoted, or
5 1 suspended after a hearing by a majority vote of the civil
5 2 service commission, for neglect of duty, disobedience,
5 3 misconduct, or failure to properly perform the person's
5 4 duties.

5 5 2. The party alleging neglect of duty, disobedience,
5 6 misconduct, or failure to properly perform a duty shall have
5 7 the burden of proof.

5 8 3. A person subject to a hearing has the right to be
5 9 represented by counsel at the person's expense or by the
5 10 person's authorized collective bargaining representative.

5 11 Sec. 7. Section 400.20, Code Supplement 2007, is amended
5 12 to read as follows:

5 13 400.20 APPEAL.

5 14 The reprimand, suspension, demotion, or discharge of a
5 15 person holding civil service rights may be appealed to the
5 16 civil service commission within fourteen calendar days after
5 17 the reprimand, suspension, demotion, or discharge.

5 18 Sec. 8. Section 400.21, Code 2007, is amended to read as
5 19 follows:

5 20 400.21 NOTICE OF APPEAL.

5 21 If the appeal be taken by the person reprimanded,
5 22 suspended, demoted, or discharged, notice thereof, signed by
5 23 the appellant and specifying the ruling appealed from, shall
5 24 be filed with the clerk of commission; if by the person making
5 25 such reprimand, suspension, demotion, or discharge, such
5 26 notice shall also be served upon the person reprimanded,
5 27 suspended, demoted, or discharged.

5 28 Sec. 9. Section 400.26, Code 2007, is amended to read as
5 29 follows:

5 30 400.26 PUBLIC TRIAL.

5 31 The trial of all appeals shall be public, and the parties
5 32 may be represented by counsel or by the parties' authorized
5 33 collective bargaining representative.

5 34 Sec. 10. Section 400.27, unnumbered paragraph 2, Code
5 35 2007, is amended to read as follows:

~~6 1 The city attorney or solicitor shall be the attorney for
6 2 the commission or when requested by the commission shall
6 3 present matters concerning civil service employees to the
6 4 commission, except the commission may hire a counselor or an
6 5 attorney on a per diem basis to represent it when in the
6 6 opinion of the commission there is a conflict of interest
6 7 between the commission and the city council. The commission
6 8 shall hire or retain an attorney to represent and advise the
6 9 commission in its official duties. The counselor or attorney~~

~~6 10 hired by the commission shall not be the city attorney or
6 11 solicitor. The city shall pay the costs incurred by the
6 12 commission in employing an attorney under this section.~~

6 13 Sec. 11. NEW SECTION. 400.30A CIVIL PENALTY.

6 14 The county attorney shall enforce the provisions of this
6 15 chapter. A person who willfully acts or fails to act in a
6 16 manner tending to avoid or defeat a provision of this chapter
6 17 is, in addition to any penalty imposed under section 400.30,
6 18 subject to a civil penalty imposed by the court not to exceed
6 19 five hundred dollars for each violation. The civil penalties
6 20 paid pursuant to this section shall be deposited in the
6 21 county's general fund.

6 22 Sec. 12. IMPLEMENTATION OF ACT. Section 25B.2, subsection
6 23 3, shall not apply to this Act.

6 24 EXPLANATION

6 25 This bill makes several changes to the civil service law.
6 26 The bill specifies what contracting activities of
6 27 commissioners are prohibited. The bill also changes who may
6 28 provide counsel or legal services to the commission by
6 29 requiring the use of independent counsel rather than a city
6 30 attorney.

6 31 The bill requires the names of persons administering any
6 32 appointment or promotion examination to be posted in the city
6 33 hall prior to the examination. The bill also requires an
6 34 appointing authority to consider each candidate on a list of
6 35 qualified candidates before another list may be created.

7 1 The bill changes the process for fire department
7 2 appointments and promotions. Current Code section 400.15
7 3 grants the fire chief appointment and promotion powers. This
7 4 bill would require the fire chief to recommend an individual

7 5 to the commission for approval or rejection within 14 days.
7 6 If such recommendation is approved by the commission, it is
7 7 sent to the city council for approval.

7 8 The bill provides that in situations where a fire chief
7 9 recommends an individual who is not at the top of the
7 10 qualified candidates list, the fire chief is required to
7 11 describe the reasons for the recommendation. The bill also
7 12 allows other individuals on the list to address the commission
7 13 outside the presence of the fire chief if such a
7 14 recommendation is made.

7 15 The bill prohibits retaliation against any individual based
7 16 upon the exercise of any right enumerated in Code chapter 400.
7 17 The bill specifies that the burden of proof is on the employer
7 18 to prove neglect of duty, disobedience, misconduct, or failure
7 19 to perform a duty. The bill also expands the appeal rights of
7 20 civil service employees to include reprimands and clarifies
7 21 who may represent an employee during a hearing or trial. The
7 22 bill also creates a civil penalty not to exceed \$500 for
7 23 violations of Code chapter 400.

7 24 The bill may include a state mandate as defined in Code
7 25 section 25B.3. The bill makes inapplicable Code section
7 26 25B.2, subsection 3, which would relieve a political
7 27 subdivision from complying with a state mandate if funding for
7 28 the cost of the state mandate is not provided or specified.
7 29 Therefore, political subdivisions are required to comply with
7 30 any state mandate included in the bill.

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